

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 67530 through CA MC 67539.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where a mining claim was located in March 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the mining claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: W. J. Glass, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

W. J. Glass appeals the June 9, 1983, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Mitzka I, Mitzka II, and Mitzka III, and the Over the Hill I and Over the Hill II lode mining claims, and the Mitzka I, Mitzka II, and Mitzka III, and the Over the Hill I and Over the Hill II placer mining claims, CA MC 67530 through CA MC 67539, abandoned and void because no notice of intention to hold the claims or evidence of assessment work was filed with BLM in 1981 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located in March 1980, and were recorded with BLM May 15, 1980. The claims are situated in sec. 34, T. 19 N., R. 10 E., Mount Diablo meridian, Sierra County, California.

Appellant asserts the 1981 proof of labor was mailed to BLM after recordation in Sierra County, California, December 4, 1981. Copies of the 1981 proofs of labor accompanied the notice of appeal.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on public land after October 21, 1976, to file a copy of the recorded location notice in the proper office of BLM within 90 days after location. In addition, prior to December 31 of each year following the calendar year in which the claim was located, the owner must file for record in the county office where the notice of location is of record and in the proper office of BLM evidence of assessment work or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Homestake Mining Co., 73 IBLA 117 (1983); Evelyn Parent, 66 IBLA 147 (1982); Herschel Knapp, 65 IBLA 314 (1982). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Francis Skaw, 63 IBLA 235 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

As the claims herein were located in March 1980, a proof of labor or a notice of intention to hold the claims was required to be recorded both in the records of Sierra County, California, and with BLM prior to December 31, 1981. Since no timely filing was made with BLM, the claims were properly deemed to be abandoned.

[2] The mining law does not require performance of assessment work until the assessment year commencing at noon of September 1 first succeeding the date of location of the claim, 30 U.S.C. § 28 (1976), so appellant was required to perform assessment work during the year running from September 1, 1980, to September 1, 1981.

Although appellant asserts the proofs of labor were actually mailed timely to BLM, the regulation defines "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the envelope containing the proofs of labor was lost by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Hughes Minerals, Inc., 74 IBLA 217 (1983); Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The filing requirement is imposed by statute and this Board has no authority to waive it. Lynn Keith, supra.

BLM has stated that it did not receive the 1981 proofs of labor for these claims. Appellant has not shown anything to the contrary. It must be found, therefore, that BLM was not acting improperly in its decision declaring the claims to be abandoned and void under the provisions of FLPMA.

Appellant may wish to consult with BLM as to the possibility of relocating these claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

